

Nadler Applauds Subcommittee Approval of Habeas Bill

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WASHINGTON, D.C. — Congressman Jerrold Nadler (NY-08), Chairman of the Judiciary Subcommittee on the Constitution, Civil Rights and Civil Liberties, today applauded the Subcommittee's approval of a bill to restore habeas corpus for individuals detained by the United States. The bill, H.R. 2826 was introduced by Armed Services Committee Chairman Ike Skelton and Judiciary Committee Chairman John Conyers, Jr.

"It is high time we restore our nation's fundamental values of fairness that were so dangerously, and unnecessarily, undermined by the Military Commissions Act," said Rep. Nadler. "I thank my colleagues on the Subcommittee for approving this bill, and I urge the full Committee to act to restore Habeas Corpus. The bill is a reasonable approach that will help bring reason back to our detention policies."

The prepared opening statement of Congressman Nadler follows:

"Today, we consider H.R. 2826, a bill to restore the jurisdiction of the federal courts to consider habeas corpus petitions from individuals detained by the United States as enemy combatants. This bill, authored by the Chairman of the full Committee, Mr. Conyers, and the Chairman of the Armed Services Committee, Mr. Skelton, is a welcome step to restore our nation's fundamental values of fairness that were so dangerously, and unnecessarily, undermined by the Military Commissions Act.

"The right to petition for a writ of habeas corpus, the 'Great Writ' has been a pillar of our legal system since the time of the Magna Carta in 1215. So fundamental to our system of laws and our liberties did the Framers consider it, that the Great Writ was enshrined in Article I of our Constitution — even before the adoption of the Bill of Rights.

"For the first time in our history, we have a President who claims for himself the power to point his finger at anybody, or at least at any non-citizen, and declare that person to be an enemy combatant simply on the basis of the President's declaration. On the basis of the President's determination, our government claims the right to lock up that person forever with no trial, no confrontation of evidence or witnesses, and no due process at any time.

"Since King John signed the Magna Carta 800 years ago, no leader of a western democracy has claimed this kind of dangerous power, a power our founders knew better than to grant to any King, much less a President.

"In June we held a hearing on Habeas Corpus and the detentions at Guantanamo Bay. Lt. Commander Charlie Swift of the U. S. Navy Office of Military Commissions, provided the members of this Subcommittee with a detailed explanation of just how unsatisfactory the current system has become. His first-hand experience with the military commissions injected some reality into the debate about this flawed system.

"That system is not worthy of this great nation, and it certainly doesn't make us, or our troops in the field, any safer. It does not contribute to our security simply to lock people away, declare them to be the 'worst of the worst,' and provide no meaningful mechanism to determine whether we even have the right people.

"We know that hundreds of people taken to Guantanamo are not a threat. Many are sitting there to this day, not because they are a danger, but because our government can't figure out what to do with them.

“People like to invoke the 9/11 attacks. No one remembers that day better than my constituents. But failing to determine who is or is not a danger to us will never prevent another attack.

“Suppose, as one witness at our hearing suggested, we had grabbed Mohamed Atta on September 10. Would sending him to Guantanamo for years without any independent determination of whether we have the right guy have stopped the attacks? Of course not. Our intelligence people had no idea that he should be questioned, or what to ask him if they did. The intelligence failures leading up to 9-11 have nothing to do with Guantanamo, and keeping people who may not pose any threat to us won’t fix those failures.

“What is really sad about this whole situation is that it is unnecessary. We have fought wars throughout our history. We have had to deal with the need to protect national security secrets in military situations, and in criminal courts. We have done so successfully without abandoning the rule of law.

“It may be a devil’s bargain to trade liberty for security, but what we are being asked to do here is to trade our core principles away without gaining any security in the process.

“Congress can and should act to correct this error. The Skelton-Conyers bill, H.R. 2826, would restore habeas corpus. This bill, of which I am original co-sponsor, would uphold the principle of habeas corpus as applied to detainees, and allows them to challenge their indefinite detention without trial, and allow court review of transfers. The bill also permits habeas courts to review the actions of the Military Commission established under the Military Commissions Act.

“It would not interfere with actions taken in areas of conflict. The bill says so quite explicitly and correctly. It is a reasonable approach that will help bring reason back to our detention policies. I urge its adoption.

“I yield back the balance of my time.”

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